

The complaint

Mrs H complains that NewDay Ltd provided her with two credit cards and increased the limit on both without adequately checking that she could afford any repayments.

What happened

Mrs H applied for and was provided with two credit cards by NewDay. The cards and dates of increase in credit limits are as follows:

Credit card 1:

Date	Credit Limit
Dec 18 (issued)	£1,200
May 19	£1,950
Sept 19	£2,950
Jan 20	£3,950

Credit card 2:

Date	Credit Limit
Jul 19 (issued)	£1,200
Feb 20	£2,700
Sep 20	£3,700

Mrs H complained to NewDay that she could only afford the minimum repayment on each card and the credit limit increases caused a strain on her financial situation. She had problems making the repayments and a payment freeze was set up on both accounts in February 2021 and ended in May 2021. Mrs H didn't contact NewDay after that date until she made her complaint. I understand that as of February 2022 the debt has been sold on to a third party.

NewDay didn't agree that it had irresponsibly lent on either card. In respect of both cards it said it had reviewed Mrs H's circumstances and carried out credit searches. It said that Mrs H met its acceptance criteria in respect of both cards. It also said that each credit limit was provided to Mrs H correctly and adequate checks carried out to ensure they were

affordable.

After referral to the Financial Ombudsman, our Investigator said that adequate checks had been carried out to ensure affordability in respect of credit card 1 when it was issued in December 2018. But he didn't think that the checks carried out at the time of increasing the limit for credit card 1 and issuing and increasing the limit on credit card 2 showed the credit to be affordable,. He reviewed the bank statements provided by Mrs H which showed significant debts and gambling transactions.

NewDay pointed out that under the Consumer Credit Rules set by the Financial Conduct Authority (FCA) it wasn't obliged to review bank statements so it would be unfair to review them retrospectively to uphold a complaint.

The matter has been passed to me for further consideration.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did NewDay complete reasonable and proportionate checks to satisfy itself that Mrs H would be able to repay the credit advanced in a sustainable way?
- If not, would those checks have shown that Mrs H would have been able to do so?
- Bearing in mind the circumstances at the time of each application, was there a point where NewDay ought reasonably to have realised it was increasing Mrs H's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

Credit card 1

I think NewDay carried out reasonable and proportionate checks in respect of the application for this card. At the time of making the application, Mrs H disclosed that she had a household income of around £28,500 (including her own self-employed income of £5,500). She had unsecured debts of around £1,000. She did have historic defaulted accounts going back nearly four years but had no more recent defaults or any payday loans.

I think NewDay acted reasonably in providing Mrs H with her credit card in December 2018 with a limit of £1,200.

When it came to considering a credit limit increase, Mrs H had gone from having a zero balance on all credit cards in December 2018 to £8,938 the next month and by the time of the May 2019 credit limit increase this balance had gone up to £9,873. Clearly this was a very significant increase in her indebtedness. NewDay already knew that the bulk of her household income was not her own income, yet the credit card debts were in her name alone.

NewDay has pointed out that it's not obliged by the rules to consider bank statements. That is right but I do think the checks it did at the time of raising the credit limit should have alerted it to carrying out further checks. I don't think, on the information it then had that it would have been appropriate to raise the credit limit without carrying out further checks. But I have to be satisfied, as set out above that if it had done further checks that it would then have found any further lending to be unsustainable. This is because I think further checks (whether by reviewing bank statements or any other method) would have revealed that Mrs H did have significant indebtedness, including making regular payments through a debt advice charity, and transactions debiting the joint account over the same period before the increase, of between £220 and £590 per month. And on her personal account she had regular gambling transactions of around £700 to £1,000 a month.

I don't think NewDay acted fairly in increasing the credit limit in May 2019. This isn't using the bank statements to retrospectively uphold the complaint but to set out that if NewDay had carried out further checks, which it should have been alerted to by the substantial increase in Mrs H's credit card debt, it likely wouldn't have increased the limit as any increase in payments would have been unsustainable.

Similar considerations apply to the September 2019 and January 2020 increases. NewDay has pointed out that, although Mrs H's credit card debt had increased to £10,110 by June 2019, this had decreased to £5,140 by August. Given that the debt had been rising since January 2019, I don't think a sudden fall in it indicates that Mrs H was managing her finances well, rather it raises the question of how the debt was repaid. And by January 2020 the figure had risen to around £9,100. I don't think that the checks carried out by NewDay for the second and third credit limit increases were adequate to show Mrs H's level of indebtedness. Again that should have alerted NewDay to carry out further checks which would in my view have shown the further credit to be unsustainable.

Credit card 2

This was issued in July 2019, when Mrs H's credit card debt had risen to its highest level, of over £10,000. For the same reasons as I've set out above in respect of credit card 1, I think in light of what Newday already knew about Mrs H's circumstances, any further credit was likely to be unsustainable. At the time of the credit limit increases in February and September 2020, Mrs H's credit card indebtedness had risen to, respectively £9,100 and £13,200.

So I think that in respect of the credit card limit increase in respect of credit card 1 and the issuing and the increases in credit limit of credit card 2, NewDay ought reasonably to have realised it was increasing Mrs H's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

Putting things right

In respect of Credit card 1:

As I don't think NewDay should have increased Mrs H's credit limit to £1,950, then to £2,950, then to £3,950, I don't think it's fair for it to charge any interest or charges on any balances which exceeded the first limit of £1,200. However, Mrs H has had the benefit of all the money she spent on the account so I think she should pay this back. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied to balances above £1,200.

- If the rework results in a credit balance, this should be refunded to Mrs H along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information recorded after 25 May 2019 regarding this account from Mrs H's credit file.
- Or, if after the rework the outstanding balance still exceeds £1,200, NewDay should arrange an affordable repayment plan with Mrs H for the remaining amount. Once Mrs H has cleared the outstanding balance, any adverse information recorded after 25 May 2019 in relation to the account should be removed from her credit file.
- As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mrs H a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

In respect of Credit card 2:

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mrs H should pay back the amounts she has borrowed. Therefore, NewDay should:

- Rework the account removing all interest and charges that have been applied.
- If the rework results in a credit balance, this should be refunded to Mrs H along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mrs H's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mrs H for the remaining amount. Once Mrs H has cleared the balance, any adverse information in relation to the account should be removed from their credit file.
- As NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Mrs H a certificate showing how much tax has been taken off if he/she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I uphold the complaint and require NewDay Ltd to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 23 September 2022.

Ray Lawley
Ombudsman